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RHEFDIA/DIA WASHINGTON DC
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C O N F I D E N T I A L SECTION 01 OF 02 TAIPEI 000610

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SUBJECT: TAIWAN RATIFIES TWO UN HUMAN RIGHTS COVENANTS

Classified By: AIT Director Stephen M. Young,
for reasons 1.4(B) and (D).

¶1. (C) Summary: President Ma Ying-jeou on May 14 signed the instruments of ratification for the U.N. International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Local human rights advocates hailed the passage as a landmark in Taiwan's human rights development. Shortly after ratifying the two Covenants on March 31, the Legislative Yuan (LY) passed implementing legislation requiring the government to adhere to the Covenants' provisions without reservation; this legislation took effect April 24. President Ma has publicly stated that the provisions of the Covenants have force of law on Taiwan and can immediately be acted on. Authorities and NGOs note it could take up to two years for all existing statutes and regulations to be amended to harmonize with the Covenants. However, Taiwan Foundation for Democracy (TFD) International Cooperation Department Director Bo Tedards noted that some civic organizations may already be preparing test cases. As it is not a UN member, Taiwan is not expecting to be able to deposit its ratifications with the UN at this time. End Summary.

Significant Step for Taiwan Human Rights Development

¶2. (C) Ratification of the two UN Covenants and passage of the implementing law are milestones in Taiwan's human rights development, Taiwan Foundation for Democracy (TFD) International Cooperation Department Director Bo Tedards told AIT. Other Taiwan and international human rights organizations, including Amnesty International, have also hailed the ratification of the Covenants as important steps in the campaign to protect human rights.

¶3. (SBU) In 1967, when the Republic of China was a UN member, Ambassador Liu Kai signed the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Review of the two Covenants was set aside, however, following the ROC's withdrawal from the UN in 1971. On March 31 this year, Taiwan's Legislative Yuan (LY) finally ratified the ICCPR and the ICESCR. The Ministry of Justice (MOJ) subsequently drafted an implementing statute, which was approved by the LY and took effect on April 24.

14. (C) MOJ will now conduct a review of existing statutes and regulations to see what changes may be needed to bring Taiwan's laws into harmony with the two Covenants. At the May 14 signing ceremony, Ma commented that he hoped this review could be concluded by December 10, International Human Rights Day, though we understand it may take up to two years to fully reconcile domestic laws and regulations with the Covenants.

Assembly Law and Labor Rights Benefit

15. (C) According to TFD Director Bo Tedards, human rights advocates, like the Taiwan Association for Human Rights (TAHR), are already preparing test cases for court. While Taiwan society will broadly benefit from the implementation of the two Covenants, protest demonstration rights and labor rights should see the most immediate effect, said Tedards. Under the new law, TAHR plans to challenge the controversial Parade and Assembly Law, which currently requires organizers to apply for permission to hold demonstrations. Article 21 of the ICCPR requires that no restrictions are placed on the freedom of assembly other than "those imposed in conformity with the law which are necessary in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedom of others." (Note: The government has introduced legislation to replace the requirement to apply for permission to demonstrate to a requirement to provide advance notification of demonstrations to the police, who will still

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be able to restrict or even cancel demonstrations for reasons of national security, public interest, or social order. The opposition DPP strongly objects to the restrictions embodied in this proposed revision of Parade and Assembly Law. End note.)

16. (C) Unionization rights and labor rights for migrant workers would also benefit from the ICESCR, said Tedards. Specifically, Article 8 guarantees the right to form unions, though it allows this right to be restricted "in the interests of national security, public order, or the protection of the rights and freedom of others." Currently, teachers, hospital staff, and police may not form unions on Taiwan. Article 7 of the ICESCR also guarantees that all workers have a right to "rest, leisure, and reasonable limitation of working hours" as well as fair wages and safe working conditions. Domestic workers on Taiwan, the majority of whom are temporary migrant workers from southeast Asia, do not enjoy basic labor protections such as minimum wage, work hour limitations, or mandated rest days under the Labor Standards Law.

Precedent for Application of Other International Covenants

17. (SBU) After ratifying the ICCPR and the ICESCR, the LY also passed implementing legislation giving the Covenants "equal footing with domestic laws" and requiring all levels of government to adhere to their provisions. The Implementation Law for the ICCPR and ICESCR requires authorities to establish a human rights reporting system in accordance with the two Covenants, to set aside a budget for their implementation, and to amend existing statutes and regulations as needed. This mechanism could provide a precedent for the application of other international covenants to Taiwan's domestic laws, Ma said at the signing ceremony.

18. (C) President Ma acknowledged that depositing instruments of ratification for the ICCPR and ICESCR with the U.N. would be difficult, though others would say impossible, at this time. (Note: The two Covenants stipulate that parties must be States. End note.) Ministry of Foreign Affairs (MOFA) Treaty and Law Division Chief Cheng Qi-heng told AIT that

Taiwan is considering how to meet this goal and he asked if the U.S. had any creative suggestions. Other MOFA officials also seemed bemused, since MOFA had sent several signed conventions to the UN during the previous DPP administration, only to have them returned. In any event, Ma has underscored, the two Covenants already carry the full force of law domestically in Taiwan.

Comment

19. (C) While the ratification of the two Covenants and the subsequent passage of the implementing law is undeniably an important step toward bringing Taiwan in line with international human rights standards, it is not clear how broad an impact the Covenants will have on domestic law. TFD Director Tedards noted that Taiwan administrative regulations tend to carry more force than the higher levels of law. As a result, some NGOs are already preparing to test in court the government's commitment to implement the Covenants. Tedards and other human rights activists expressed surprise that officials did not attach reservations to the Covenants, as they have with similar types of documents in the past. Tedards speculated that the authorities, in their rush to ratify the Covenants, may not have fully considered the implications of what they were doing. There is no easy way for them now to turn away from the commitments they have already made, and this should stimulate further progress in protecting human rights on Taiwan.

YOUNG